HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 81 Vendors Licensed Under the Beverage Law
SPONSOR(S): Avila
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Careers & Competition Subcommittee	8 Y, 7 N	Willson	Anstead
2) Government Operations & Technology Appropriations Subcommittee		Topp	Topp
3) Commerce Committee			

SUMMARY ANALYSIS

The bill repeals s. 565.04, F.S., which prohibits package stores from selling any merchandise other than alcoholic beverages, with a few exceptions. The bill allows vendors licensed under s. 565.02(1)(a), F.S., to sell alcoholic beverages in stores without restrictions on other items that may be sold. This will allow grocery stores and large retail stores to put spirits in their main store rather than building or renting a separate store to sell liquor. The repeal of this section will allow vendors to have an entrance that physically connects a package store with a retail store.

The bill expands the current exception to the requirement that vendors shall not employ persons under the age of 18 provided in s. 562.13(2)(c), F.S. Current statutory language requires a vendor ***to be*** a drugstore, grocery store, department store, florist, specialty gift shop, or automobile service station, in order to employ a person under the age of 18. The bill amends the language to require the vendor ***to include within its premises*** a retail drugstore, grocery store, department store, florist, specialty gift shop, or automobile service station, in order to employ a person under the age of 18, with additional restrictions.

The bill requires any vendor who employs a person under the age of 18 to be supervised by a person over the age of 18 and requires the supervisor to verify by identification the age of any purchaser on behalf of the underage employee before permitting the sale of alcohol to the purchaser.

The bill provides that it is unlawful for a vendor to employ a person under the age of 18 during a month where the vendor derives more than 30 percent of its gross revenues from the sale of alcoholic beverages.

The bill is expected to have a significant negative fiscal impact on the Department of Business and Professional Regulation. *See Fiscal Analysis Section & Economic Impact Statement*.

The bill has an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Chapters 561-565 and 567-568, F.S., comprise Florida's Beverage Law. The Division of Alcoholic Beverages and Tobacco (Division), in the Department of Business and Professional Regulation (Department), is responsible for the regulation of the alcoholic beverage industry.[1]

In general, Florida's Beverage Law provides for a structured three-tiered distribution system consisting of the manufacturer, distributor, and vendor. The manufacturer creates the beverages. The distributor obtains the beverages from the manufacturer and delivers them to the vendor. The vendor makes the ultimate sale to the consumer. In the three-tiered system, alcoholic beverage excise taxes generally are collected at the distribution level based on inventory depletions and the state sales tax is collected at the retail level.

Package Stores

Section 565.04, F.S., provides that vendors licensed to sell alcoholic beverages under s. 565.02(1)(a), F.S., are not permitted to sell any merchandise in their store other than alcoholic beverages, bitters, grenadine, nonalcoholic mixers (not including juice from outside of Florida), fruit juice produced in Florida, bar and party supplies and equipment and tobacco products. Section 565.02(1)(a), F.S., creates a state license for "vendors who are permitted to sell any alcoholic beverages regardless of alcoholic content" and "operating a place of business where [alcoholic] beverages are sold only in sealed containers for consumption off the premises." The result has been the creation of "package stores," where the vendor sells the above and nothing else in an enclosed space that is separated from any other store by a wall.

Typically, package stores have a license referred to as a "quota license," which is a license permitting the sale of liquor, beer and wine in the store. The number of quota licenses issued by the Department in each county is limited based on the population of the county in which the license is located. Typically, quota licenses are owned by:

- A liquor store physically connected to a large retail store such as a grocery store, or
- A separate liquor store not affiliated with a large retail store.

According to the Department, there are currently 525 large retail locations that have both a quota license for their package store and a license to sell beer and wine in the connecting retail store, which is not accessible from the package store due to the restrictions set forth under s. 565.04, F.S. In addition, there are 135 quota licenses owned by large retailers that could be transferred to an affiliated but not physically connected large retail store.

Age Restrictions

The beverage law restricts businesses who sell alcoholic beverages from employing persons under the age of 18, subject to a few exceptions. Package stores are not exempt from this requirement and may only employ persons age 18 or over.

There are a number of exceptions to this requirement. Subsection 562.13(2)(c), F.S., permits venders to employ persons under the age of 18 years old if the vendor is a drugstore, grocery store, department store, florist, specialty gift shop, or automobile service station.

[1] s. 561.02, F.S.

<u>Effect of the Bill</u>

<u>Package Stores</u>

The bill repeals s. 565.04, F.S., permitting vendors licensed under s. 565.02(1)(a), F.S., to sell alcoholic beverages in stores without restricting what other items may be sold. This will permit grocery stores and large retail stores to put spirits in their main store rather than building or renting a separate building to sell the higher alcoholic content beverages.

It is possible that 660 licenses to sell beer and wine will no longer be needed by vendors that have both a large retail store and a connected package store or affiliated package store. Licenses to sell liquor will be allowed to be transferred into a large retail store, and a vendor will be able to sell liquor in a large retail store that is currently licensed to sell beer and wine.

Additionally, the repeal of this section will permit vendors to have an entrance connecting package stores with physically connected retail stores. It is also possible that some vendors will choose to maintain both licenses. In such cases, the vendor will need to ensure that alcoholic beverages purchased from the distributor under each license are not comingled in the stores, in the storage areas, or during sales to consumers in order to comply with tax requirements.

If vendors choose not to maintain both licenses, license revenue to the Department may decline by $258,720.

<u>Age Restrictions</u>

The bill expands the current exception to the requirement that vendors shall not employ persons under the age of 18 provided in s. 562.13(2)(c), F.S. Current statutory language requires a vendor ***to be*** a drugstore, grocery store, department store, florist, specialty gift shop, or automobile service station, in order to employ a person under the age of 18. The bill amends the language to require the vendor ***to include within its premises*** a retail drugstore, grocery store, department store, florist, specialty gift shop, or automobile service station, in order to employ a person under the age of 18, with additional restrictions on the vendor. The additional restrictions require the vendor to:

- Pay the annual taxes set forth in ss. 563.02(1), s. 564.02(1), 30 or s. 565.02(1)(a), F.S.;
- Derive 30 percent or less of its gross revenues each month from the sale of alcoholic beverages;
- Require a person 18 years of age or older to supervise the minor employee; and
- Require the supervisor to verify by identification the age of the purchaser to be 21 years of age or older and approve the sale of alcoholic beverages.

It is unlawful for a vendor that meets the above requirements to employ a person under the age of 18 during a month where the restriction on monthly revenue is exceeded.

B. SECTION DIRECTORY:

Section 1 repeals s. 565.04, F.S., restricting the sale of certain merchandise at a licensed package store and restricting direct access to such vendor’s place of business.

Section 2 amends s. 562.13 F.S., providing an exception to certain employment restrictions for vendors licensed under the Beverage Law for the employment of persons under a specified age.

Section 3 provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

According to the Department, upon passage of HB 81, it is possible that 660 licenses will no longer be needed by large retailers for package stores. Total revenue reduction as a result of 660 fewer licenses being issued is estimated at $258,720 in recurring funds (660 licenses x $392 maximum license fee = $258,720).[2]

Section 561.342, F.S., directs a portion of license revenues to local governments. Based on estimates by the Department, $147,574 of the $258,720 total revenue loss would be to local governments. In addition, section 215.02, F.S., provides an eight-percent Service Charge to General Revenue, which based on the bill will likely result in a direct reduction to the General Revenue Fund of $20,698.

The Department estimates a reduction in revenue to the Alcoholic Beverages and Tobacco Trust Fund (AB&T TF) to be $90,448. Section 561.121, F.S., provides that at the close of each fiscal year, the Department may retain (for cash-flow purposes) a $2.0 million unencumbered cash balance in the AB&T TF. Any amount above the $2.0 million cash balance is required to be transferred to the General Revenue Fund. Therefore, any reduction in revenues to the AB&T TF will have an impact on General Revenue Fund collections.

Specifically, the Department's calculations of the revenue loss are as follows:

Service Charge to General Revenue 8%: $20,698 ($258,720 X 0.08 GR service charge = $20,698)[3]

AB&T TF: $90,448 ($238,022 - $147,574 to be transferred to cities and county governments).

2. Expenditures:

There may be a reduction in the number of applications received by the Department.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Department estimates that 660 licenses will no longer be needed by large retailers with the passage of HB 81. Section 561.342, F.S., provides that 24% of the revenue generated by the sale of licenses is shared with county governments and 38% of revenues generated by the sale of licenses are shared with city governments. The Department projects that cities and counties could lose up to $90,449 and $57,125, respectively, for a total annual loss of $147,574 in recurring funds.

The Department's estimates on the reduction of revenues to cities and counties are as follows:

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[2] Bill Analysis on HB 81 by the Department of Business and Professional Regulation, dated January 4, 2017. On file with the Government Operations and Technology Appropriations Subcommittee.

[3] Section 215.20, Florida Statutes, provides for the Service Charge to General Revenue.

Cities: $90,449 ($238,022 available for distributions after General Revenue Service Charge reduction X 0.38 = $90,449).

Counties: $57,125 ($238,022 available for distributions after General Revenue Service reduction X 0.24 = $57,125).

2. Expendiures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may impact the marketplace and sales for large and small alcoholic beverage retailers. Some alcoholic beverage licensees may be able to increase profits by selling additional merchandise. Additionally, some businesses currently required to obtain multiple licenses for multiple stores will be able to save money by obtaining one license to conduct business rather than multiple licenses by combining their package store with a larger store location.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The Division will likely need to amend application forms for licensure. Otherwise, there is no mandatory rulemaking or rulemaking authority in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Current statutory language requires a vendor ***to be*** a drugstore, grocery store, department store, florist, specialty gift shop, or automobile service station, in order to employ a person under the age of 18. The bill amends the language to require the vendor ***to include within its premises*** a retail drugstore, grocery store, department store, florist, specialty gift shop, or automobile service station, in order to employ a person under the age of 18, with additional restrictions on the vendor. Therefore, rather than requiring that the business be a drugstore or other listed business type, the business will now qualify for the exception if the building houses a drugstore or other listed business type. This could expand the types of businesses that could hire a person under the age of 18 if the business adds one of the listed businesses into its licensed premises.

The terms “drugstore,” “grocery store,” “department store,” “florist,” “specialty gift shop,” and “automobile service station” are not defined, so there is nothing indicating that a retailer that sells flowers in a small part of its store does not meet the definition of “florist,” or a convenience store with an aisle that holds cold medications does not meet the definition of “drugstore.”

The bill provides that it is unlawful for a vendor to employ a person under the age of 18 during a month where the restriction on monthly revenue is exceeded. If a vendor faces this situation, it is likely the vendor will not know that he or she has exceeded the restriction on monthly revenue until after the month has passed and the unlawful behavior has already occurred. The only way a vendor will be able to prevent a violation in cases where the business is often close to the restriction limit is for the vendor to track the alcoholic beverage sales daily and compare the sales to an estimate for overall revenues. If the revenue from the sales of alcohol approaches 30 percent, the vendor would be required to stop all sales of alcoholic beverages. This would be time consuming for the vendor and difficult to administer.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES